

October 16, 2008

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND DECISION

APPELLANTS:

Ralph Crear

Representing: Christopher & Noraida Dawson
559 Windsor Place
Renton, WA 980

Mark Barber
Warren, Barber & Fontes
City Attorney
Renton, WA 98057

Representing: City of Renton
Paul Baker
Code Compliance Inspector
Renton, WA 98057

Administrative Appeal of Notice and Order for Vacation of
premises located at 559 Windsor Place, Renton, WA.
File No.: LUA 98-084, AAD and SRO 50628 and OTC
CO50692

PUBLIC HEARING:

After reviewing the Appellants' written requests for a hearing
and examining available information on file, the Examiner
conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the September 23, 2008 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, September 23, 2008, at 1:32 p.m. in the Council Chambers on the seventh floor
of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

Parties present: Mark Barber, Sr. Assistant City Attorney

Paul Baker, Code Compliance Officer
City of Renton

Ralph Crear, Attorney for Dawson

Christopher Dawson, Appellant

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow file containing the original application, various reports, and letter of appeal.	<u>Exhibit No. 2:</u> Stop Work Order
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<u>Exhibit No. 3:</u> Original Notice and Order	<u>Exhibit No. 4:</u> Inspection Report of Eugene Schneider
<u>Exhibit No. 5:</u> ICC Certifications for Mr. Schneider	

Mr. Crear waived an opening statement and began by calling Mr. Dawson to testify.

Upon questioning by Mr. Crear, Mr. Dawson stated that he resides at 559 Windsor Place, Renton. He was aware of the Stop Work Order dated June 15, 2005. He believed that the Stop Work Order was issued because the existing permits had expired. There had been approximately four inspections at the site, Michael Allen came to the house, Mr. Allen discussed what would be required to make the job better. The next time he came out to inspect the progress Mr. Allen stated that things were looking good, it was not complete and there were a few more things to do. Shortly after the second visit, the neighbor sued for adverse land possession, she wanted more land even though it was not hers. During this time the permits expired, he did not realize the importance of keeping them current. At that time Mr. Dawson called for another inspection, they discussed the plumbing and the building in general. That was the last time he talked to Mr. Allen.

When the Stop Work Order arrived, Mr. Allen was contacted and asked to come out to do another inspection. Mr. Dawson was told at that time, that he needed to call for inspections whether he was done or not, it would be okay, and they would just note that the job was not complete on the inspection form.

Mr. Dawson stated that he did not understand what the Stop Work Order was for, he had been having inspections all along and had obtained new permits. He did not receive any documentation of the actual inspections that had been done.

Mr. Dawson received a Notice and Order dated June 17, 2008 that was in relation to an inspection done on July 11, 2007. At that time three inspectors came out to the house, they walked through the property checking for defects, Mr. Baker stated that Mr. Dawson would receive a copy of the inspection within a month or so. About 3-weeks later Mr. Dawson received the inspection report, it was very thorough and detailed as to what remained to be done to the home.

Mr. Allen told him that most of the items on the list would be “grandfathered” in since they were existing conditions.

The Examiner asked about Exhibit A and B that were attached to the Notice and Order.

Mr. Dawson stated that Exhibit B was a continuation of Exhibit A

Mr. Dawson further stated that from the time of the Notice and Order, he had not made any substantial changes to his home.

Upon questioning by Mr. Barber, Mr. Dawson stated that he was told to hire a licensed electrician in December of 2004. The original requests to do remodeling to his home began in 2002 and 2003. In 2003 the request was related to strengthening a wood deck. Mr. Dawson stated that he had a lot of construction experience, but he was not doing the work, a contractor was doing the work. He also had an experienced plumber doing the plumbing work.

He did not recall an Order to Correct dated September 9, 2005 requiring him to submit site plans before continuing with the remodel. He said it was probably right, but he didn’t remember it. After Mr. Baker visited the property, he received a communication stating that he had not responded and he told him that he had not

received any paperwork. Regarding storage of water on the property, he stated that he spoke to a Mr. Arthur who stated that water runs downhill, if water comes out of the barrel and goes across the property and onto the neighbors property, that is a code violation. That is not what happens, the overflow from the barrel comes out and sinks into the ground and comes out on the sidewalk. Even after the sump pump was stopped, water continued to come out on the sidewalk.

There definitely has been an ongoing problem with issues relating to his home. His home was posted on June 17, 2008 with a Notice to Vacate, the Order was handed to him personally by Mr. Paul Baker. Mr. Dawson and his wife are still residing in the premises and have never vacated the premises for any period of time. He has not done anything to the house since receiving the Notice and Order and no permits have been requested. Mr. Smith, his contractor, did put some concrete waterproofing in the basement. An architect is currently working on a set of plans but they are not complete.

Mr. Dawson stated that the issue of not having enough finances came about because this was the second time Mr. Baker posted the house as a dangerous building.

The Examiner stated that the history seems to go back quite a ways. The issue today is the appeal of the Stop Work Order and Notice that were issued in June and July of this year, not the past.

Mr. Dawson stated that there was a walk-through scheduled, but no one showed up. The intention of that was to determine the meaning of the previous inspections and to make sure the contractor and architect would be looking at the same things that the inspectors were looking at. (The lists in Exhibit A and B)

Mr. Michael Smith, Contractor for Mr. Dawson, reviewed the Notice and Order and attached documents. He stated that some of the items listed are a work in progress. A lot of the items on the list were vague, some included things like twisted wires without the proper covering. The line was dead and did not go back to the electrical box. Other items included things that had not as yet been removed. The house was built in 1943 and most all of the items do need to be done to the house, but they must be done in sequence and that takes some coordination. Some of the items he just did not see, he did not see anything that was unsafe or would cause Mr. Dawson to vacate the house. The fans would be grandfathered in and so he would not touch things like that.

Mr. Crear stated that this is a bi-level residence and most of the issues are in the basement area and that is where most of the construction is being done. There is no construction on the main floor of the house.

Upon questioning by Mr. Barber, Mr. Smith stated that he is a licensed general contractor and has electricians and plumbers working for him.

Jonathan Brown, Architect, 17400 158th Ave SE, Renton 98058 stated that on page 4 item 10, which generally address the uniform building code, is no longer applicable. It now is the International Building Code that is used. Items 10-15 address the architectural and structural issues. In a general sense, the possibility of a collapse, all things are possible. It is possible that the entire structure could collapse as well as the possible collapse of the supporting deck.

The Examiner inquired about walls being moved, and if the wrong wall was moved it could lead to collapse.

Mr. Brown stated that if it were a bearing wall, and it was removed without shoring it up somehow, the ceiling could collapse. Exterior walls in the basement do require a footing, from his observation, there was enough supporting structure to prevent a collapse. The beams in the basement need to be fixed in order to support the structure and make it more habitable. It would be his assumption that between the garage wall and the structure a fire separation wall would be required. The wall is there but it needs to become a firewall.

The report was general but covered the steps that need to be taken in order to address the issues with this particular structure, however the report is not detail enough to address the specifics of what needs to happen to be in compliance.

Upon questioning by Mr. Dawson, Mr. Brown stated that the occupancy separation wall says occupancy and it does matter in terms of this being a heated vs. not heated space, this is a separation between two separate areas.

Mr. Smith stated that regarding the circuit breakers for the washer and dryer in the basement, currently there is no laundry room in the basement.

Mr. Dawson purchased the house in 2001, the house was in much worse condition than it is today.

The Examiner stated that because some of these things are “grandfathered” in does not necessarily make the building inhabitable. It still may be unsafe, even if the house was purchased in that condition. Unsafe contracting work does not mean any of it was reasonable or created a safe building.

The bottom line is whether someone’s life is in jeopardy. In 1943 safe building standards were definitely different from today. This building is in poor repair and needs to be brought up to code. These conditions can lead to life safety issues, wires that are not connected or terminated properly, and fixtures that are hanging. Mr. Dawson may not be entitled to be “grandfathered” because the previous owners did a poor job on some of the repairs.

Mr. Barber called Dick Gilchrist as their first witness:

Richard Gilchrist, 27322 217th Place SE, Maple Valley, WA 98038 stated that he is an electrical inspector with the City of Renton and has been an electrical inspector for approximately 25 years. On July 11, 2007 he inspected the residence of Christopher Dawson. He did not look at any previous records of the house prior to his inspection. During his inspection he found a number of places where wires were twisted together rather than using a listed device, without the correct device possible shock and fire hazard is present. There was no nail plating done, there would be a chance of getting a sheet rock screw in the Romex and as the load builds up this can be a fire hazard. A nail plate is 1/16” thick and goes over a wood stud anyplace where you have less than an inch and a quarter of wood from the inside wall to the outside of the stud. Romex is a non-metallic sheet cable that is used for house wiring and should be inspected before it is concealed in walls or ceilings.

The sub-panel had neutrals and grounds tied together which causes current on the equipment ground and is a very possible shock hazard.

There is no “grandfather” on electrical code.

There was no grounding on the hot and cold water pipes in the basement. Grounding allows current to go somewhere else besides giving a shock to a resident. There was a ground rod that was driven down in the basement, which does not give any grounding in that instance. All grounding rods should be placed outside the home. There was a lot of Romex coming in and out of metal boxes without the protective sleeve that is required. There were a couple of paddle fans in the bedrooms, which did not have the correct electrical support for paddle fans. Paddle fans require a listed box, which has longer screws to keep the fans from coming off the ceiling.

RCW requires that no electrical wiring can be concealed until a complete inspection has been done. Inspection records show what has been there for many years and what is relatively new construction.

Homeowners can do work without a licensed electrical contractor, they must obtain a permit and hold to the required standards. In 2007, when the inspection was done, there were a lot of concerns with shock and fire hazards in the house. A list of findings from the inspection done in 2007 were provided to Mr. Dawson.

Upon questioning by Mr. Crear, Mr. Gilchrist stated that if someone else gave him this report, he would be able to go to the residence and make the necessary corrections to the home. A lay person may have more difficulty, but the repairs should most likely be done by a licensed electrical contractor to insure safety.

Mr. Dawson asked if a power box does not have any power to it and the work was done so long ago, why is that his responsibility other than it will be fixed in the future, what makes it such a dangerous building today?

Mr. Gilchrist stated that he presumes everything is hot when he goes in to do an inspection unless service has not been turned on yet. He would have no reason to test a box, if there is power coming into the house, the assumption is that the box is hot.

Eugene Schneider, Combination Inspector, City of Renton

Upon questioning by Mr. Barber, Mr. Schneider stated that he is a Combination Inspector and is qualified in plumbing, mechanical and building. He did inspect the residence of Mr. Dawson on July 11, 2007.

This inspection was not a total inspection but a preliminary inspection that was requested by the Building Official. It is the duty of the permit applicant to cause the work to remain open and exposed for inspection purposes. He continued to explain what areas were inspected and what should have been open to his inspection in all the various areas of plumbing, mechanical and building.

The first building permit number was B02-0468 which was to move walls of single-family dwelling. This permit showed no inspections were done until Mr. Schneider showed up in July of 2007. This permit was revoked for lack of work being done. There were additions on that part of the basement that were never applied for or approved to be built.

Permit B03-0275 was to replace rear deck and install sheeting in front carport, provide guardrail on rear deck. Exterior wood should be treated, framing was not complete, exterior wall supporting deck and back part of the basement wall requires footing. There never was any permit to put an addition on the back part of the house.

The carport has been enclosed and turned into a garage, an occupancy separation wall is required and has not been done. Once it is enclosed as a garage the requirements of a garage must be complied with, without complying this becomes a life safety hazard.

Michael Allen related to Mr. Schneider that Mr. Dawson had called requesting an inspector to come out at certain times in order to keep the permit from expiring, but when Mr. Allen arrived at the residence, Mr. Dawson was not ready for the inspection.

Permit B04-0665 front and cover rear deck and interior walls. Mr. Allen was also out for framing on this particular permit. The enclosure of the deck exceeded the scope of the permit and was revoked. The upper portion of the deck on the back part of the house was put into a conditioned space inside the first floor for a possible future laundry room. Permit B03-0226 was to strengthen the wood deck. It was concluded that this deck was above the garage, which never at any time in the permit application related that this was a deck/roof combination. More support and concrete footing was required, with positive connection from post to pad and post to beam.

Permit B04-0513 there was no ground plumbing approval, the slab was already poured and no inspection had ever been done on the ground plumbing.

No permits were ever issued for mechanical inspections.

All results from inspections showing that things are not being completed and being left in an unsafe condition and the fact that permits were not issued for things that are being constructed on the site, all of this leads to being a life safety situation.

Upon being questioned by Mr. Crear, Mr. Schneider stated that he did not look in the older portions of the house only the new areas that were being remodeled. The small room at the back of the house had a permit to cover the back deck, however, the deck was not covered rather a portion was actually enclosed and made into a room. The room was insulated and closed off prior to any type of inspections.

Mr. Dawson stated that Mr. Meckling cancelled the permit prior to the inspection for the interior walls that were moved. So for all the items, if the inspector said it was not ready to be inspected, then I'm just calling to have my permit extended, nothing that was inspected was actually inspected, is that correct?

Mr. Schneider continued saying that moving interior walls is one thing and still needs an inspection, but the permit was to cover the rear deck, not enclose a portion of it and make an additional room. This goes beyond the aspect of moving the interior walls. Framing inspections cannot be done prior to plumbing and electrical inspections.

There was discussion between Mr. Schneider and Mr. Dawson regarding some of the changes that have been made and the permitting processes that were gone through or should have been gone through. Items that were put in by previous owners or contractors are still the responsibility of Mr. Dawson as the current owner.

A 10-minute break was taken and the record resumed at 3:24 p.m.

Larry Meckling, Building Official for City of Renton stated that he has reviewed the permit history for this matter. The history of applications for building, plumbing and mechanical date as far back as 2002 and as late as 2004 for a plumbing and electrical permit. All have expired either without any inspection or with a correction notice or non-approval prior to the expiration. Today there are no active permits at that site.

Permits do not get revoked, if a permit expires the City would refuse to extend it, the applicant is instructed to re-apply for a new permit. The other alternative would be a permit that has exceeded the scope for which it was originally applied and does not apply any more, it would be cancelled and the applicant would then have to re-apply for the proposed scope of work they are intending to pursue.

Based on inspections conducted by his staff he agrees with their assessment and the fact that there are life safety issues at the Dawson residence.

To avoid further abatement proceedings, it was suggested a 90-day timeframe be given to submit a full set of design engineer plans that cover the full scope of all the work that has taken place there, an all inclusive permit. If that was obtained within 90 days and the inspections were conducted and approvals received the City would be satisfied. If the requirements were not followed through with, the same situation as today could arise again. If the above recommendation were not met, he would recommend that the Dawson residence be demolished. If, on the other hand, the permits were obtained and the work appeared to be moving forward, he would still recommend that the Dawson's vacate the premise while it is brought up to code.

Under a permit, if things are moved or replaced that are subject to review, for example if a wall is opened and the insulation is no good, it is not “grandfathered” now that it has been brought out in the open, it must be replaced or fixed because it is substandard and does not meet code requirements.

A permit will not expire if work is shown within a six-month period. Permits show a 180-day expiration date from day one. If an inspection is held in the third month, the permit expires 180 days from the date of the inspection, each inspection re-sets the expiration date to a new 180-day period. There does have to be work done and the inspection has to show improvement and standards being brought up to code.

It is not necessary to hire a licensed plumber or electrician, but if work is not to the code standard, then a professional will have to be hired to insure that the project is to code.

Upon questioning by Mr. Crear, Mr. Meckling stated that he does know who Mr. Dawson is, but has not seen him in quite some time. The permit process involves an explanation by the applicant of a true estimation of the work being performed on site along with minimal drawings that would be subject to field inspection. In line of what has transpired, he would not allow Mr. Dawson an over-the-counter permit now.

Mr. Dawson and Mr. Crear carried on a conversation regarding the permits, inspections and reports that ultimately were received from the inspections.

The Examiner stated that on June 15 a Stop Work Order was issued and on June 17 a Notice to Vacate was issued. The state of the home in June 2008 is the concern today, was it habitable, safe while remodeling, if and when a permit is issued. The question today is should the Dawsons still be living in their home? If there is no progress made, the City could ask for a demolition of the property.

Until a decision is issued, the parties may settle the matter. However, it is the Examiner’s understanding that the City wants Mr. Dawson and his wife out of the home until it is habitable and safe. The Order before us today is for Mr. Dawson and his wife to vacate the premise, once they have vacated, then architects and engineers can come in, permits may be obtained and work may proceed.

Paul Baker, Code Compliance Officer, City of Renton stated that there had been a lot of correspondence and talks from 2005 until July 11, 2007 where the City agreed to have inspectors go to the home and inspect for deficiencies that had been reported in the past. They waited eleven and a half months following that inspection for a response from Mr. Dawson or his representative to notify the City that permits were being applied for. Nothing has occurred. Along with the Building Official it was determined that this structure had conditions that were reflected in the dangerous building code. At that time the Notice and Order was prepared, dated June 17, 2008 and was personally served upon Mr. Dawson by Mr. Baker.

From July 11, 2007 to June 17, 2008 he did not recall any discussions with Mr. Dawson or any of his representatives. They did try to establish a walk-through inspection of the property, there seems to have been a misunderstanding between Mr. Dawson’s contractor and the City, it was agreed that the contractor, his electrician and plumber would come to the City for a meeting. That meeting never took place, finally Mr. Smith called and asked where Mr. Baker was, it was Mr. Smith’s understanding that the meeting was to take place at the Dawson home. The meeting was never rescheduled.

The Dawson residence was posted as an unsafe building at the same time the Notice and Order was served. He further informed Mr. Dawson that he could not reside in the residence once it was posted. He was given 72 hours to remove his personal belongings, they could go inside to do the repairs, but no one can live in the house.

Mr. Dawson asked for clarification on the “grandfather” issues.

Mr. Baker advised Mr. Dawson to talk with the Building Official and ask for information in writing.

Mr. Barber stated that the City's recommendation is that Mr. and Mrs. Dawson be given 90 days to submit a complete set of design and engineering plans for an all-inclusive remodel of their home. They permit the necessary inspections and approvals obtained from those inspections. No one should be living in the home during this 90-day period.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 4:00 p.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

The Findings, Conclusions and Recommendation were distributed under separate cover on September 30, 2008.

THESE ARE THE MINUTES of the Public Hearing, October 16, 2008.

FRED J. KAUFMAN
HEARING EXAMINER

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., October 14, 2008.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., October 14, 2008.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.